

The House Committee on Judiciary Non-civil offers the following substitute to HB 897:

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual offenses, so as to change certain provisions relating to sexual assault against persons in custody, certain patients, and other persons subject to the authority of a supervisor or disciplinary person; to remove a consent defense to sexual assault on certain persons; to reorganize the Code section; to provide for a definition; to provide for misdemeanor punishment under certain circumstances; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual offenses, is amended by revising Code Section 16-6-5.1, relating to sexual assault against persons in custody, as follows:

"16-6-5.1.

(a) As used in this Code section, the term:

(1) 'Actor' means a person accused of sexual assault.

(2) 'Intimate parts' means the genital area, groin, inner thighs, buttocks, or breasts of a person.

(3) 'Psychotherapy' means the professional treatment or counseling of a mental or emotional illness, symptom, or condition.

(4) 'Sexual contact' means any contact between the actor and a person not married to the actor involving the intimate parts of either person for the purpose of sexual gratification of the actor.

(5) 'School' means any educational program or institution instructing children at any level, pre-kindergarten through twelfth grade, or the equivalent thereof if grade divisions are not used.

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~~(b) A probation or parole officer or other custodian or supervisor of another person referred to in this Code section commits sexual assault when he or she engages in sexual contact with another person who is a probationer or parolee under the supervision of said probation or parole officer or who is in the custody of law or who is enrolled in a school or who is detained in or is a patient in a hospital or other institution and such actor has supervisory or disciplinary authority over such other person. A person convicted of sexual assault shall be punished by imprisonment for not less than ten nor more than 30 years; provided, however, that any person convicted of the offense of sexual assault under this subsection of a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than 50 years. Any person convicted under this subsection of the offense of sexual assault shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.~~

~~(c)(1) A person commits sexual assault when such person has supervisory or disciplinary authority over another person and such person engages in sexual contact with that other person who is:~~

~~(A) In the custody of law; or~~

~~(B) Detained in or is a patient in a hospital or other institution.~~

~~(2) A person commits sexual assault when, as an actual or purported practitioner of psychotherapy, he or she engages in sexual contact with another person who the actor knew or should have known is the subject of the actor's actual or purported treatment or counseling, or, if the treatment or counseling relationship was used to facilitate sexual contact between the actor and said person.~~

~~(3) Consent of the victim shall not be a defense to a prosecution under this subsection.~~

~~(4) A person convicted of sexual assault under this subsection shall be punished by imprisonment for not less than ten nor more than 30 years; provided, however, that any person convicted of the offense of sexual assault under this subsection of a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than 50 years. Any person convicted under this subsection of the offense of sexual assault shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.~~

~~(d) A person who is an employee, agent, or volunteer at any facility licensed or required to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code Section 31-7-12, relating to personal care homes, or who is required to be licensed pursuant to Code Section 31-7-151 or 31-7-173, relating to home health care and hospices, commits sexual assault when such person engages in sexual contact with another person who has been admitted to or is receiving services from such facility, person, or entity. A person convicted of sexual assault pursuant to this subsection shall be punished by imprisonment~~

~~for not less than ten nor more than 30 years, or a fine of not more than \$5,000.00, or both. Any violation of this subsection shall constitute a separate offense. Any person convicted under this subsection of the offense of sexual assault shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.~~

A person who has supervisory or disciplinary authority over another individual commits sexual assault when that person:

(1) Is a teacher, principal, assistant principal, or other administrator of any school and engages in sexual contact with such other individual who the actor knew or should have known is enrolled at the same school;

(2) Is an employee or agent of any probation or parole office and engages in sexual contact with such other individual who the actor knew or should have known is a probationer or parolee under the supervision of the same probation or parole office;

(3) Is an employee or agent of a law enforcement agency and engages in sexual contact with such other individual who the actor knew or should have known is being detained by or is in the custody of any law enforcement agency;

(4) Is an employee or agent of a hospital and engages in sexual contact with such other individual who the actor knew or should have known is a patient or is being detained in the same hospital; or

(5) Is an employee or agent of a correctional facility, juvenile detention facility, facility providing services to a person with a disability, as such term is defined in Code Section 37-1-1, or a facility providing child welfare and youth services, as such term is defined in Code Section 49-5-3, who engages in sexual contact with such other individual who the actor knew or should have known is in the custody of such facility.

(c) A person who is an actual or purported practitioner of psychotherapy commits sexual assault when he or she engages in sexual contact with another individual who the actor knew or should have known is the subject of the actor's actual or purported treatment or counseling or the actor uses the treatment or counseling relationship to facilitate sexual contact between the actor and such individual.

(d) A person who is an employee, agent, or volunteer at any facility licensed or required to be licensed under Code Section 31-7-3 or 31-7-12 or who is required to be licensed pursuant to Code Section 31-7-151 or 31-7-173 commits sexual assault when he or she engages in sexual contact with another individual who the actor knew or should have known had been admitted to or is receiving services from such facility or the actor.

(e) Consent of the victim shall not be a defense to a prosecution under this Code section.

(f) A person convicted of sexual assault shall be punished by imprisonment for not less than one nor more than 25 years or by a fine, or both; provided, however, that:

